

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF THE CITY OF HUNTSVILLE, ALABAMA**

These Comments are submitted by the City of Huntsville, Alabama. The purpose of this filing is to briefly describe the legal basis for franchising under Alabama law, to present facts about our franchises, and to provide the Commission with some considerations that might be useful in determining an appropriate regulatory response.

Huntsville supports the National Association of Telecommunications Officers and Advisors ("NATOA") and believes that local governments' role in the franchising process should be recognized and preserved. We also support many of the Commissioners' views in the Statements accompanying the Notice of Proposed Rulemaking. Of particular significance are those opinions noting the complexity of the issue at hand; expressing concern about the legitimacy of the *de facto* refusal theory; desiring competition; recognizing the vital and legitimate role of local government in the franchising process; and tentatively concluding that it is not unreasonable local franchising authorities to seek to prevent redlining, to establish reasonable build out requirements, and to provide sufficient support for public, educational and governmental access channels.

**Franchising in Alabama**

Under Alabama law, cities are municipal corporations vested with a portion of the state's sovereign power to protect the public's health, safety and welfare. Title 11 of the Alabama Code delegates numerous powers to cities: the power to pass laws and punish offenses, the power to tax, and importantly, the power to regulate and receive compensation for activities occurring in, over, and under city streets and sidewalks, otherwise known as the public "right of way".

Our state constitution and laws respect the property rights of cities by authorizing cities to grant franchises. A "franchise" is simply a special contract awarded by government that confers special privileges not held by common right. Everyone, for example, has a right to use the public streets and sidewalks for ordinary travel i.e., the right of way. No one, however, has a right to appropriate public property for private use. Such use can only be authorized by the local

government, upon such terms and conditions as may be negotiated, such as construction schedules, bonding, insurance and the compensation to be paid for the use of public property.

City streets and sidewalks are not ordinary assets. The streets and sidewalks are where citizens live their public lives. Rights of way comprise a special category of real property which local government holds in trust to be managed for the benefit of the whole. It is difficult to imagine a more important or basic role of government than the management of its public space. For at least a hundred years, long before there was cable television, or even telephones, cities granted franchises authorizing telegraph companies and street railroads to dig and sink posts on the margin of the streets; water companies to install pipes under the streets; electric light companies to string wires over the streets; garden clubs to install landscaping on medians and adjacent to sidewalks; hot dog vendors to push their carts along urban sidewalks; and to residents to build balconies and bay windows over the sidewalks.

### **Cable Franchising in Huntsville**

Huntsville's is Alabama's fourth largest city with a population of approximately one hundred sixty thousand and operates under the Mayor Council form of government. Its land area is 186.9 square miles with 6,517,804.939 linear feet (1,234.43 miles) of right of way. The City's annual budget is one hundred eighty-seven million dollars.

Huntsville currently has franchises with two cable providers, Comcast Cablevision of Huntsville, Inc. ("Comcast") and Knology Inc. ("Knology"). Comcast has operated a cable television company providing services in the City since 1986: First under a thirty-year franchise granted in 1965 to T & G Cable Co., Inc., and now in accordance with a franchise granted to it by the City in 2001. The City's franchise with Comcast was renewed on or about January 11, 2001 and runs to January 11, 2011 or January 11, 2013, depending on certain conditions subsequent. The Knology franchise was originally awarded in 1986 and is set to expire on March 6, 2006. We are currently in informal renewal negotiations.

The City's recently negotiated franchise with Comcast provides for a five percent gross revenue franchise fee; includes certain service obligations such as universal service requirements, basic programming services, provision of cable service to certain governmental and institutional facilities, and PEG channel support; emergency alert requirements; customer service, consumer protection and privacy provisions; system performance requirements and construction terms and sequencing; bonding and insurance; and an MFN provision.

In exchange for the rights and privileges conferred on the cable service provider, the City, its schools, and its citizens have obviously benefited from the outcome of the negotiations not only as evidenced by the provisions noted above, but also in terms of the provision of cable and other services that are available throughout the City. Conversely, the presence of not only the franchised cable providers but other service providers in the public rights-of-way has added to the cost and logistics of obtaining and maintaining the public rights-of-way. Franchising assists in that effort not only through the fees generated, but also in the construction, insurance and bonding requirements.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. As a result, both parties to the negotiations are interested in obtaining the best outcome from the process for their respective interests given the legal parameters dictated by federal and state law. In the case of Huntsville, those interests include exercising its congressionally delegated authority for the benefit of the community. This, by necessity, takes time. It also costs money.

If the franchising process could be handled at the federal level without compromising federal and local concerns and goals, it would certainly relieve municipalities of the time and expense involved in franchising efforts. However, because the particular goals advanced and concerns addressed by congressionally delegated local government authority are uniquely local, they can only be accomplished and addressed locally. Therefore, any attempt to compromise the effectiveness of local authority could only prove detrimental to federal and local goals and concerns.

## **Considerations**

As the Commission knows, the public rights-of-way are a valuable, but limited, public asset that municipalities hold in trust for their citizens. Part of that trust is the responsibility of maintaining a degrading resource and managing among the competing demands for that resource; demands which are both public and private in nature. These are often difficult and expensive tasks to accomplish. In fact the City has expended considerable resources repairing and upgrading existing rights-of-way, and acquiring additional ones to accommodate the increasing demands. Such efforts are costly and time consuming.

Huntsville has successfully managed its responsibility to its citizens to acquire, maintain and manage the right of way for more than one hundred years for numerous utilities and providers of communications and cable services, all of whom must share and occupy the right of way in a reasonably orderly, predictable and efficient manner. It would be difficult to imagine that such local and incremental efforts could be accomplished by eliminating local responsibility and funding, and by placing it in the hands of a federal regulatory body, or in the hands of private industry.

Furthermore, as these various video, voice and data technologies have converged, some have called for less regulatory oversight at the federal, state, and local level. The very fact that there is such a convergence should, in certain instances, call for the opposite response. By definition competition involves the struggle over a limited supply. As technologies converge, their providers will be placing greater and greater demands on a limited supply. Our resources, whether the airwaves or roadways, are finite. Therefore, they must be managed and apportioned in order to promote their efficient use and preserve their availability, thereby protecting and advancing competition. Moreover, where an asset is uniquely local, such as the public rights-of-way, they should be managed and regulated locally.

In addition, contrary to the assertions of some, municipalities do not want to be an impediment to the roll out of advancing technologies. We also do not want any of our citizens to

be bypassed in favor of more lucrative financial pastures. Cities want the provision of advanced services in a competitive marketplace for all their citizens. This cannot be achieved, however, if federal regulatory efforts attempt to limit or further restrict the efforts of local authorities to accomplish this goal.

Another fundamental local concern which is best addressed from the local level are consumer protection and safety issues. Instead of eliminating local government's oversight role in these areas, they should be strengthened and expanded to cover the existing and emerging video, voice, and data services. It would be difficult to imagine how an adequate response could come from the federal level to many of the calls and complaints cities get from their citizens.

The City of Huntsville strives to remain a vital, technologically advanced and informed city. The presence of cable, telecommunications, and information services can and should serve to promote these goals, which in turn should serve the providers of such services. Through its cable franchising authority, for example, cities have institutional networks and public, educational and governmental access channels, which provide positive contributions to the community. The City of Huntsville is concerned, however, that eliminating or reducing local franchising authority could or would eliminate these opportunities and resources for a community.

## **Conclusion**

The question the Commission seeks to answer is “whether, in awarding franchises, LFAs are carrying out legitimate policy objectives allowed by the Act or are hindering the federal communications policy objectives of increased competition in the delivery of video programming and accelerated broadband deployment and, if that is the case, whether and how we can remedy the problem.” If it is found that the LFAs are carrying out legitimate policy objectives, then the inquiry ends. It would then be left to Congress to decide whether to it wants to abandon the goals advanced by, and particularly suited to, local franchising authority. On the other hand, if it is found that some LFAs are not in conformance with the Act, then the response should not be global. Rather, the response should be incremental and tailored to address the offending practice, but only in the forum and in the manner prescribed by Congress.

It is our hope that the Commission will see that the proper response is to refrain from interfering with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing federal law with regard to either existing cable service providers or new entrants. To the extent we could add specific facts for the Commission to consider, we are glad to have done so. To the extent we have been allowed to participate in the debate of this issue, we are appreciative of the opportunity.

Respectfully submitted,

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